

CIVIL 03-1261CCC IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

BROWN AND CALDWELL

Plaintiff

vs

CIVIL 03-1261CCC

THE SOLID WASTE MANAGEMENT
AUTHORITY
THE MUNICIPALITY OF SAN JUAN

Defendants

O R D E R

This is a diversity action founded on the equitable doctrine of unjust enrichment originally brought by plaintiff Brown and Caldwell (BC) against the Solid Waste Management Authority of Puerto Rico (SWMA) and the Municipality of San Juan (MSJ). On August 30, 2004, the Court dismissed the action against defendant SWMA after concluding that the doctrine of unjust enrichment was inapplicable since it is a subsidiary remedy and BC had “other legal remedies at its disposal which would allow it to obtain redress.” See Opinion and Order (docket entry 70), at p. 5. As we explained at the time, SWMA had executed a series of contracts in relation to seventy-two (72) solid waste management facilities with an entity known as the Puerto Rico Infrastructure Management Group, Inc. (PRIME), and this entity had subcontracted with, among others, plaintiff BC for the performance of some of the contracted projects. Thus, we found that BC had an action available against SWMA under Article 1489 of the Puerto Rico Civil Code, 31 L.P.R.A. §4130, and an action against PRIME for breach of contract under Article 1054 of the Puerto Rico Civil Code, 31 L.P.R.A. §3018, and that the availability of these two remedies precluded the application of the doctrine of unjust enrichment in this case.

Before the Court now are the Motion to Dismiss Under Rule 12(b)(6) filed by defendant MSJ on September 9, 2004 (**docket entry 72**), BC’s opposition filed on October 25, 2004 (**docket entry 77**), and MSJ’s reply to the opposition filed on November 19, 2004 (**docket entry 82**). While the motion is founded on an alleged bar of actions against a municipality

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when there is a lack of a written contract between it and the entity that claims to have provided it with services, we find instead that MSJ stands on a situation similar to that previously argued successfully by SWMA. The record shows that MSJ contracted for the design, construction and operation of a municipal solid waste transfer station with a company called E.C. Waste, Inc. (EC), (see attachment to MSJ's reply, docket entry 82), and it appears that it was EC who then subcontracted with BC (see BC's opposition, docket entry 77, at p. 2, ¶4). Thus, as was the case with SWMA, BC had at least an action available against MSJ under Article 1489 of the Puerto Rico Civil Code, 31 L.P.R.A. §4130, and an action against EC for breach of contract under Article 1054 of the Puerto Rico Civil Code, 31 L.P.R.A. §3018. Consequently, the availability of these two remedies serves to preclude the application of the doctrine of unjust enrichment and, as a result, plaintiff BC's action against MSJ which is founded solely on that doctrine (see Complaint, docket entry 1, at p. 10, ¶ 41) is ORDERED DISMISSED.

For the reasons stated, MSJ's Motion to Dismiss Under Rule 12(b)(6) (**docket entry 72**) is GRANTED. Accordingly, judgment will be entered DISMISSING BC's action against MSJ.

SO ORDERED.

At San Juan, Puerto Rico, on July 22, 2005.

S/CARMEN CONSUELO CEREZO
United States District Judge